

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NIAKEIA SIBBY,

Plaintiff,

v.

Case No. 04-CV-75025-DT

OWNIT MORTGAGE SOLUTIONS, INC.
(formerly Oakmont Mortgage Company, Inc.)
and COUNTRYWIDE HOME LOANS, INC.,

Defendants.

ORDER GRANTING IN PART DEFENDANTS' "MOTION TO COMPEL DISCOVERY"

Before the court is Defendants' "Motion to Compel Discovery," filed October 23, 2005. Defendants aver that a deposition of Plaintiff was scheduled for October 17, 2005, and that neither Plaintiff Nor her counsel appeared. Notice was sent by U.S. mail and supplemented with messages left with Plaintiff's counsel.

Plaintiff's counsel responded to the motion on October 31, 2005, saying that he had been traveling outside the United States beginning on October 6, 2005, and although he "had someone opening his mail" for him, he was nonetheless unaware of the scheduled deposition. Plaintiff further responds that Plaintiff is willing to appear "at a mutually convenient time and place." In a message to Defendants' counsel appended to his response, Plaintiff's counsel makes reference to his travel abroad and the "multitude" of religious holidays he was observing during some of which he was obligated to avoid work. These travels and holidays, in essence, combined to keep him away from the practice of law for almost all of the last month of the court's approved

period of discovery. No arrangements to attend to Plaintiff counsel's business during that period appear to have been made; at least none have been brought to the attention of the court.

In order to rapidly resolve the motion, the court's staff on November 15, 2005, telephoned both counsel to establish an on-the-record telephone hearing. The result was that Defendant's counsel announced himself as readily available while Plaintiff's counsel, having been left a voice mail message, has not responded at all as of the time this order is being prepared, November 17, 2005 at 9:30 a.m.¹

The court now deems a hearing unnecessary pursuant to Local Rule 7.1(e)(2), and based upon the written briefs, the court finds that the deposition of Plaintiff was improperly avoided and that Defendants have shown good cause to require the deposition to go forward. Accordingly,

IT IS ORDERED that Defendants' "Motion to Compel Discovery" [Dkt. # 14] is GRANTED IN PART. Plaintiff shall appear **at a time and place designated by Defendants' counsel on or before November 30, 2005.**

The court takes under advisement the portion of Defendants' motion requesting costs and fees incurred in furtherance of the motion.

¹ Defendants' description of the recent difficulty in communication with Plaintiff's counsel is reminiscent of Plaintiff's counsel's lack of responsiveness to the court's own call as described above. Whatever the reason for the situation, the court will make no further effort to arrange a hearing before deciding this issue.

The Scheduling Order previously issued is amended as follows: dispositive motions, if any, are due on or before **December 12, 2005**. All other dates remain as previously scheduled.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 23, 2005 (4:25pm)

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 23, 2005 (4:25pm), by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522